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10/678,911	10/03/2003	Ralph Michael Fay	7227-1C	1413

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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

MAILED
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GROUP 1700

Application Number: 10/678,911
Filing Date: October 03, 2003
Appellant(s): FAY ET AL.

John D. Lister
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 26, 2006 appealing from the Office action mailed October 20, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,140,220	Walter	7-1964
6,231,927 B1	Ruid	5-2001
2,786,004	Schwartz et al.	7-1953

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walter (U.S. Patent No. 3,140,220) in view of Ruid (U.S. Patent No. 6,231,927 B1) and Schwartz et al (U.S. Patent No. 2,786,004).

With regard to Claim 56, Walter discloses an insulation assembly (insulation material having more than one face; column 2, lines 31 – 34) for a building (for a wall, therefore in a building; column 7, lines 16 – 19) comprising an insulation layer (length of insulating material; column 2, lines 31 – 34), therefore having length and width and thickness, which is fibrous (comprising fiber; column 2, lines 65 – 66) and resilient (cannot be a rigid body; column 2, lines 60 – 62) and a longitudinally extending centerline, the insulation having lateral surfaces (edge faces; column 2, line 33), therefore defined by the length and thickness of the fibrous insulation layer and therefore also having first and second surfaces defined by the length and width of the length and width of the fibrous insulation layer; the first surface of the fibrous insulation layer has lateral edge portions adjacent the lateral surfaces of the fibrous insulation layer (portions of the insulation layer that are immediately adjacent to the edge and to edge bands; column 2, line 40; Figure 2), the fibrous insulation layer being compressible in the direction of its width from its uncompressed width to a lesser width (compressing to a narrower width, therefore compressible to a lesser width; column 3, lines 7 – 8); a facing sheet with no folds therein (liner; Figure 2), secured by interfacial adhesive to the insulation layer (column 2, line 35) and therefore having a first outer surface and a second inner surface, the second inner surface bonded to the first major surface of the fibrous insulation layer; the facing sheet overlies and is substantially coextensive with the first surface of the fibrous insulation layer as shown in Figure 2 and has lateral edge portions overlying but not bonded to the lateral edge portions of the first surface (the edge bands are unsecured; column 2, line 40) so that, when the resilient fibrous layer is compressed to the lesser width, the lateral edge portions extend as tabs beyond the lateral surfaces of the fibrous insulation layer (when the body is squeezed, therefore compressed, into a space, the edge bands are used as flanges, therefore tabs, for securing to the inside faces of members; column 2, lines 54 – 60), the facing sheet and the fibrous insulation layer being separable longitudinally by hand to separate the faced building insulation assembly into faced insulation sections having lesser widths than the uncompressed width of the faced building insulation assembly (intermediate slit lines, therefore allowing separation by slitting, therefore separation by hand, to sections of lesser width; column 5, lines 15 – 19) the thickness of the fibrous insulation is more than 3 inches (column 4, line 29); the facing sheet disclosed by Walter is not bonded to the fibrous insulation layer where the facing sheet and insulation layer are longitudinally separable (the slits form with the edge bands, and are therefore adjacent to the edge bands, therefore the facing sheet is not bonded; column 5, lines 19 – 24). Walter fails to disclose a fibrous insulation layer having a length of 46 inches or more and an uncompressed width of 15 inches or more and insulation that is fungi – growth resistant.

Ruid teaches the use of insulating material (column 4, lines 7 – 8) having a length of 46 inches or more (12 feet long; column 4, line 21) and a width of 15 inches or more (4 feet wide; column 4, line 21) for the purpose of obtaining insulation which is resiliently compressible (column 4, lines 7 – 10). One of ordinary skill in the art would therefore have recognized the advantage of providing for the length and width of Ruid in Walter, which comprises insulation, depending on the desired compressibility of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a length of 46 inches or more and an uncompressed width of 15 inches or more in Walter in order to obtain insulation which is resiliently compressible as taught by Ruid.

Schwartz et al teach insulation which is fungi – growth resistant (comprising fungus retarding agents; column 3, lines 9 – 22) for the purpose of obtaining insulation for use in buildings (column 1, lines 15 – 17). One of ordinary skill in the art would therefore have recognized the advantage of providing for the fungi growth resistance of Schwartz et al in Walter, which comprises insulation, depending on the desired use in buildings of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for fungi growth resistance in Walter in order to obtain insulation for use in buildings as taught by Schwartz.

Walter also fails to disclose lateral edge portions that are at least 0.25 inches in width. However, Walter discloses the selection of the width of the lateral edge portions depending on the desired width of the tabs (the edge bands are used as tabs, as stated above). Therefore, one of ordinary skill in the art would have recognized the utility of varying the width of the lateral edge portions to obtain the desired width of the tabs. Therefore, the width of the tabs would be readily determined by through routine optimization of the width of the lateral edge portions by one having ordinary skill in the art depending on the desired use of the end product as taught by Walter.

It therefore would be obvious for one of ordinary skill in the art to vary the width of the lateral edge portions in order to obtain the desired width of the tabs, since the width of the tabs would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Walter.

(10) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

(11) Response to Argument

Appellant argues that Walter does not disclose an insulation assembly wherein the facing sheet and resilient fibrous insulation layer are longitudinally separable by hand to separate the insulation assembly into faced insulation sections having lesser widths than the uncompressed width of the insulation assembly.

However, in Figure 6, Walter discloses slit lines '65' on the insulation assembly (column 5, lines 14 – 19); Walter therefore discloses lines along which the insulation assembly is longitudinally separable into lesser widths, because it is slit and therefore separated along the lines. The insulation assembly is also separable by hand, because it comprises slit lines and is therefore capable of being separated using a slitting tool in the hands of the user who performs the slitting.

Appellant also argues that Walter does not disclose a facing sheet that is not bonded to the resilient fibrous insulation layer where the facing sheet and fibrous insulation layer are longitudinally separable.

However, Walter discloses slits which form with the edge bands disclosed by Walter (column 5, lines 19 – 24) and are therefore not bonded; furthermore, Walter discloses that adhesive on the liner, therefore the facing sheet, is lacking at regions which are to be slit, so as to provide edge bands (column 4, lines 66 – 68). Walter also discloses strips of chipboard '60,' in Figure 6, to avoid adhesion of the liner to the insulation layer, so that edge bands are formed (column 5, lines 5 – 11); the slit lines are provided on the chipboard (column 5, lines 20 – 23), therefore the facing sheet is not bonded to the resilient fibrous insulation layer where the facing sheet and fibrous insulation layer are longitudinally separable.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,
Marc Patterson 7/24/06
Marc A. Patterson

Conferees:
Harold Pyon JMcNeil 1775 for Harold Pyon
Carol Chaney Carol Chaney